IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.11129 of 1997

Dated: November 7, 2006

Between:

Aga Habetul Hussain Mazindrani, S/o. Mirza Mohammed Taher Mazindrani, aged about 34 years, R/o. Nagaram, East Godavari District, and others.

… Petitioners

And

A.P. State Wakf Board, rep. by its Chief Executive Officer, Hyderabad, and others.

… Respondents

Order:

This Writ Petition has been filed seeking Certiorari to call for records of the proceedings of the first respondent dated 12-04-1997 and to quash the same and a direction to the respondents not to interfere with the right of the petitioners to manage the properties of Wakf by name Moulali Panjah Shahi Mosque, East Godavari District.

2. The case of the petitioners is that Moulali Panjah Shahi Mosque,

Nagaram village, Mamidikuduru Mandal, East Godavari District, was notified as Wakf in A.P. Gazette dated 26-11-1994 under the Towliath of Mirza Gulam Hussain and Mirza Mohd. Taher Hussain, who are said to be fathers of the first and third petitioners respectively and it has been in existence for the last more than 100 years. They claim that they have succeeded to the office of Muthawallis of the Wakf and have been managing it all these years. It is stated that they had also paid a sum of Rs.61,162/- towards Wakf fund, and respondents have also accepted the same.

3. Their grievance is that the first respondent passed the impugned order invoking powers under Section 65 of the Wakf Act 1995 ('the Act' for brevity) to take complete charge of the Wakf under direct management though no such power is vested in him. It is their case that the management of Wakf can be taken over under direct management only in cases where no suitable person is available for appointment as Muthawalli or when the Board is satisfied, for reasons to be recorded in writing, that filling up such vacancy is prejudicial to the interests of the Wakf; however, in this case, in the absence of any such contingency, the impugned order has been passed for taking over complete charge of the Wakf under direct management along with its movable and immovable properties.

4. This court while admitting the Writ Petition, by order dated 27-05-1997 suspended the impugned order and the same has been continuing all along. Though the Writ Petition is of the year 1997, counter affidavit has not been filed controverting the averments of the petitioners.

5. Learned counsel for the petitioners would contend that the impugned order has been passed in violation of the principles of

natural justice and also in the absence of any grounds for invoking power under Section 65 of the Act.

6. On the other hand, learned Standing Counsel for the Wakf Board would contend that petitioners have no right to manage the properties of the Wakf since they are only self-styled Muthawallis and there is no order appointing them as Muthawallis by the competent authority.

7. With reference to the above submissions, it is to be seen that though in the impugned order, reference has been made to the report of the Inspector Auditor (Wakf) East Godavari District dated 19-10-1994, for taking over charge of the Wakf, under direct management, it appears, there is no notice to the petitioners explaining the situation. Further, recitals of the impugned order also do not indicate either a finding being recorded to the effect that no person is available or filling up such vacancy is detrimental to the interests of the Wakf.

8. As much as it is the case of the petitioners that Moulali Panjah Shahi Mosque is notified as Wakf in A.P. Gazette dated 26-11-1994 under the Towliath of Mirza Gulam Hussain and Mirza Mohd. Taher Hussain, who are said to be fathers of the first and third petitioners respectively, and in the absence of any reasons recorded in the impugned order for invoking power under Section 65 of the Act, I deem it appropriate to set aside the impugned order dated 12-04-1997 and remit the matter for reconsideration by the competent authority. Accordingly, the impugned order is set aside and the matter is remitted for reconsideration by the competent authority. If the respondents are of the opinion that petitioners do not have any right to manage the properties of the Wakf, and that any circumstance exists under Section 65 (1) of the Act, it is open for them to issue appropriate show cause

notice to the petitioners, give them opportunity and time to file their reply, and pass appropriate orders.

9. The Writ Petition is allowed to the extent indicated above. No order as costs.

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JUSTICE R. SUBHASH REDDY.

November 7, 2006
MRR